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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,171	11/09/1999	ANDREAS BLECKMANN	BEIERSDORF59	6227

7590 06/16/2004

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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/436,171

Applicant(s)

BLECKMANN ET AL.

Examiner

Gina C. Yu

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 27 April 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1,3-5,7-9 and 11.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

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Continuation of No. 5:

Applicants state that not “all stick emulsions are created equal” and “there is no factual basis for [the] assumption [of obviousness] when viewing the differences in formulation between Schreiber and Dupuis”. Examiner respectfully disagrees. Applicants’ example of food is not an analogy to the present case because, in this case, the references both teach topical solid compositions for the same cosmetic effects. Applicants are reminded that attorney opinion is no substitute for factual evidences. See MPEP § 716.01(c). If applicants attempt to show that the use of the Dupuis cationic surfactants conventionally used on cosmetic stick composition in Schreiber cosmetic stick composition is somehow unexpected or surprising, factual evidences to support such position would be required. See MPEP § 716.

Applicants also assert that the Dupuis cationic surfactant is not a required element to the invention. In response, regardless of whether the cationic surfactants are used in an example or preferred embodiment, the reference unambiguously teaches the function and purpose of adding the cationic surfactants which would have motivated a skilled artisan to use the surfactants with a specific reason – to provide conditioning effects to the skin. Applicants’ assertion that the rejection lacks factual support is clearly erroneous. Similarly, applicants’ assertion that the proposed combination of the references is a “picking and choosing” is unpersuasive because Dupuis clearly teaches a reason to use the cationic surfactants. Applicants fail to explain why such an unambiguous teaching would not have been obvious to a skilled artisan.

While applicants assert that the rejection is somehow based on applicants’ own disclosure, examiner respectfully disagrees with applicants’ position. In this case, the

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rejections and the proposed motivation to modify the prior arts are solely based on the objective teachings of the cited references. When there is a clear teaching of a conditioning agent used in a cosmetic stick composition as in Dupuis, there is no need to use applicants' disclosure to use that conditioning ingredients to make a conditioning composition. Applicants do not even indicate what teaching was extracted from applicants' disclosure. Examiner maintains the position that the rejections are proper.

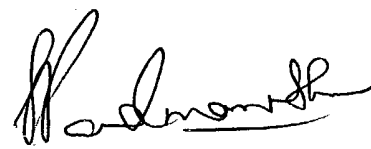
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu
Patent Examiner


6/14/04


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